



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 7, 1999

Jennifer L. Diggins, Treasurer
Northeast Utilities Employees' Political Action Committee
701 Pennsylvania Avenue
Washington, D.C. 20004

RE: MUR: 4949

Dear Ms. Diggins:

On August 14, 1998, the Federal Election Commission acknowledged receipt of the Northeast Utilities Employees' Political Action Committee's ("NUEPAC") *sua sponte* submission. This *sua sponte* submission advised the Commission of possible violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

Upon review of certain materials, including Commission records and information provided by NUEPAC, the Commission found, on November 30, 1999, that there is reason to believe that NUEPAC and you, as treasurer, violated 2 U.S.C. § 434(b). These violations involved the failure of the organization to report non-federal receipts and disbursements to the Commission from 1995 through the 1998 April Quarterly reporting period. The Factual and Legal Analysis that formed the basis for the Commission's findings is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receiving this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into discussions directed towards reaching a negotiated settlement of this matter prior to a finding of probable cause to believe. In its *sua sponte* submission, NUEPAC indicated that the organization was in fact interested in pursuing a negotiated settlement of this matter. Enclosed with this letter is the conciliation agreement that the Commission has already approved. If the organization is agreeable to the provisions of

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Jennifer L. Diggins

MUR: 4949

Page 2

the enclosed document, have the conciliation agreement signed by the appropriate individuals and return it, along with the civil penalty, to the Commission.

Please note that you should respond to this notification and offer to conciliate as soon as possible as the time period during which this Office will engage in pre-probable cause conciliation negotiation is limited to 30 days. Requests for extensions of time will not be routinely granted. Such requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel. Thereafter, your attorney(s) will be authorized to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions regarding this matter you should contact, Marianne Abely. Ms. Abely, the attorney assigned to this matter, may be reached at (202) 694-1596.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis

Conciliation Agreement

Procedures

Designation of Counsel Form

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Northeast Utilities Employees'
Political Action Committee, and
Jennifer L. Diggins, as treasurer¹

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I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("FEC" or "Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). On August 6, 1998, the Commission received a sua sponte submission filed by the Northeast Utilities Service Company² ("Company"). This letter was signed by James J. Finnucan who was then serving as treasurer for the Company's separate segregated fund, the Northeast Utilities Employees Political Action Committee ("NUEPAC" or "Committee"). In this submission, Mr. Finnucan admitted that NUEPAC had failed to comply with certain FEC reporting regulations since first registering as a political committee with the Commission in 1978. Specifically, since its registration NUEPAC has maintained one bank account out of which it has supported both state and federal electoral activities. Instead of reporting all of this activity in its FEC reports as the regulations require, however, NUEPAC had been disclosing only its federal activity to the Commission. Non-federal

¹ On June 7, 1999, an Amendment to the Committee's Statement of Organization was filed with Commission. By this Amendment, the Committee gave notice that the name of the organization was being changed from the Northeast Utilities Political Action Committee to the Northeast Utilities Employees' Political Action Committee. In addition, the Amendment indicated that there was a new treasurer, Jennifer L. Diggins. During the time period relevant to the instant report, the Committee was known as the Northeast Utilities Political Action Committee and James J. Finnucan was serving as treasurer.

activities had been reported exclusively to the Office of the Secretary of State in Connecticut. These reporting irregularities were discovered during what was apparently a routine internal audit conducted by the Company in 1998.

The instant report focuses on NUEPAC's financial disclosure practices with the FEC between 1995 and the time period encompassed by the 1998 April Quarterly Report. Beginning with the 1998 July Quarterly Report, the Committee has filed consolidated disclosure reports detailing both its federal and non-federal activities.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act") prohibits corporations from making contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b(a). A corporation may, however, legally participate in federal elections through the establishment of a political committee called a separate segregated fund ("SSF"). 2 U.S.C. § § 431(4)(B) and 441b(b)(2)(C). Within ten days of establishment, such committees must file a Statement of Organization with the Commission. 2 U.S.C. § 433, 11 C.F.R. § 102.1(c).

SSFs are permitted to accept contributions, as well as, make contributions to and expenditures on behalf of federal candidates and committees. The ability of these organizations to solicit contributions is limited by Commission regulations. A corporate SSF may only solicit contributions from a restricted class of persons associated with the connected organization, its parent, subsidiaries, branch divisions or affiliates. This

² Northeast Utilities Service Company ("Company"), the Committee's connected organization, is a registered electric utility holding company under the Public Utility Holding Company Act of 1935.

potential class of contributors includes the corporation's stockholders, its executive and administrative personnel, as well as, these individuals' family members. 11 C.F.R. §§ 114.1(c) & 114.5(g).

The manner in which such contributions are received or collected by SSFs can vary and often includes periodic payment systems, such as payroll deductions, check-off systems or solicitation requests enclosing return envelopes. 11 C.F.R. § 114.1(f). The issuance of contribution guidelines is permissible, although those individuals being solicited in this way must be informed that the guidelines are merely suggestions. Contributors must be notified that they are free to give more or less than the suggested amounts. 11 C.F.R. § 114.5(a)(2)(i) & (ii). Irrespective of how the money is received, such solicitations must also contain special notices that inform the potential contributor of the SSF's political purpose and of their right to refuse to contribute without fear of reprisal. 11 C.F.R. § 114.5(a)(3)-(5).

SSFs may receive up to \$5,000 per year from any one contributor. 11 C.F.R. § 110.4(c). Unless qualified as a multicandidate committee, an SSF may contribute up to \$1,000 per candidate, per election and \$5,000 per year to other political committees and \$20,000 per year to a national party committee. 11 C.F.R. §§ 110.1(b)(1), (c) & (d). Those committees that do qualify as so-called multicandidate committees may contribute up to \$5,000 per candidate, per election and \$15,000 per year to a national party committee. 11 C.F.R. § 110.2(b) & (c).

Political committees that engage in both federal and non-federal (state/local) activities have two options under the regulations with respect to how committee funds are maintained. They may set up one federal account (an SSF) that will support both federal

and non-federal candidates and committees. All electoral activity in this case must be reported to the FEC. The other option is for the organization to set up two accounts: one, a political committee (an SSF) that supports federal activity only and complies with the registration and reporting requirements of the Act; and the other, a nonfederal account for moneys used exclusively in state and local elections. 11 C.F.R. § 102.5(a)(1)(i) & (ii).

There are certain conditions attached to the acceptance of contributions by political committees established for the purpose of financing federal and non-federal electoral activities. According to 11 C.F.R. § 102.5(a)(2), only contributions meeting all of the following requirements may be received by the SSF and deposited into its single account:

1) the contributions are designated for the federal account; 2) the contributions result from a solicitation that expressly states that the moneys will be used in connection with a federal election; and 3) the contributions are from individuals who are informed that their contributions are subject to the prohibitions and limitations of the Act.

Those committees that choose to manage both federal and non-federal activities from a single account must comply with all the requirements of the Act. 11 C.F.R. § 102.5(a)(1)(ii). In particular these SSFs must, just like all other political committees, file periodic reports with the FEC disclosing all receipts and disbursements. 2 U.S.C. § 434(b), 11 C.F.R. § 114.5(e)(3). Because section 434(b) requires the disclosure of "receipts" and "disbursements", and not merely "contributions" and "expenditures", these organizations must report to the Commission all of their non-federal, as well as their federal, activity.³

³ Compare 2 U.S.C. §§ 434(b)(2) and (b)(4), which discuss the contents of reports as including all receipts and all disbursements, respectively, with 2 U.S.C. §§ 431(8)(A) and (9)(A), which define "contributions" and "expenditures" as being "for the purpose of influencing" federal elections.

B. Factual background

As previously mentioned, the Northeast Utilities Service Company is the connected organization for NUEPAC. The Company, which is located in Hartford, CT, established this SSF by filing a Statement of Organization with the FEC on August 24, 1978. In addition to stating the Committee's intention to support candidates for Federal office in excess of \$1,000 per calendar year, the form also indicated that this SSF would be operating in more than one state and would therefore be filing election reports, called Statements of Receipts and Expenditures, with Connecticut's Office of the Secretary of State. According to its Statement of Organization, NUEPAC opened a bank account for its electoral activities with the Bank and Trust Company of Hartford, CT.⁴ The SSF qualified with the FEC as a *multicandidate committee* on March 31, 1980. NUEPAC has represented to the Commission that it has operated as an employee based political committee since its inception in 1978 and receives its contributions solely through payroll deductions.

Since 1978, NUEPAC has been separately disclosing its non-federal activities to the Secretary of State's Office in Connecticut and its federal activities to the Commission. It was not until the previously mentioned 1998 internal audit that the organization recognized that this practice was not in conformance with FEC disclosure regulations. Because NUEPAC maintained a single bank account for all its electoral activities, it should have been reporting all such federal and state involvement in its quarterly FEC disclosure filings. According to NUEPAC's submission, the error was unintentional and was caused by "an incorrect understanding of FEC reporting regulations."

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A comparison of the state and federal reports confirms that there was a continuous failure to report all of NUEPAC's electoral efforts in support of non-federal candidates in violation of 2 U.S.C. § 434(b). The FEC reports submitted by NUEPAC during the relevant time period were incorrect as to the figures provided for: total receipts deposited into its single bank account; total disbursements made from the account; and actual cash balances maintained in the account. Table 1 shows the gross dollar amount of non-reported receipts and non-reported disbursements during the relevant time period. In total, the respondents failed to disclose \$118,480.88 in receipts and \$106,632.45 in disbursements to state candidate committees and party organizations from 1995 through the 1998 April Quarterly reporting period. Based on this information, the Commission has found that the respondents, NUEPAC, and Jennifer L. Diggins, as treasurer, have violated 2 U.S.C. § 434(b).

⁴ Since 1978 when the account was first established, this institution has been sold several times and the account is now with Fleet Bank in Hartford, CT.

TABLE 1

YEAR	RECEIPTS	DISBURSEMENTS
1995	\$32,029.67	\$6,050.00
1996	\$41,832.93	\$63,312.45
1997	\$36,453.64	\$17,405.00
1998	\$8,164.64	\$19,865.00
Total:	\$118,480.88	\$106,632.45

NUEPAC has represented that it has followed federal guidelines with respect to its receipt of contributions into its single account. The disclosure reports filed with both the FEC and the state of Connecticut reflect that the SSF received contributions exclusively from individual employees of the connected organization and its affiliates and that it did not accept money from corporations or labor organizations. These records also appear to demonstrate that the committee did not accept excessive contributions. The respondent committee has also indicated that contributions were received by employees belonging to the legally solicitable class under FECA through a payroll deduction program. NUEPAC's federal disclosure reports do, in fact, appear to show that the contributors were made up exclusively of members of the restricted class, namely executives, administrators and several directors of Northeast Utilities and certain of its affiliated organizations. These reports also reveal a consistent pattern with respect to the same individuals making contributions on a regular basis, the timing of the contributions, and the amounts of money listed. This pattern seems to confirm the use of a payroll deduction program as NUEPAC's sole contribution generating vehicle.

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While Connecticut election law requires political committees to report contributions aggregating in excess of \$30 along with the name and address of each individual, a contributor's occupation and employer are disclosed only in cases where the contributions range from \$100.00-\$1,000.⁵ Even though the SSF was not required to disclose the occupation and employer of each contributor in its state reports, these materials appear to indicate that the contributors listed probably fall within the federally mandated restricted class. It is possible to confirm that at least some of those persons belong to the solicitable class because many of the same individuals who are listed in the FEC reports also appear in the state filings as contributors. And, just as in the federal reports, there appears to be a pattern to the timing and amounts of contributions listed in the Connecticut filings that is consistent with a payroll deduction program.

NUEPAC has indicated that those employees participating in this payroll deduction program have had the option of deciding whether and what portion of their moneys they wish to be utilized for federal and/or state activities. Once raised, contributions have been deposited in the SSF's single bank account and tracked through routine book keeping methods.

III. CONCLUSION

Given that NUEPAC failed to report to the Commission a total of \$225,113.33 in non-federal funds from 1995 through the 1998 April Quarterly Reporting period, the

⁵ See Connecticut General Statutes Annotated § 9-333j(c)(1) & (3) & 9-333j(c)(H).

Commission has found that there is reason to believe that the Northeast Utilities
Employees' Political Action Committee and Jennifer L. Diggins, as treasurer, violated
2 U.S.C. § 434(b).